DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 26,197

In re: 4248 4th Street, SE #101
4283 6th Street, SE #201
4283 6th Street, SE #202
4285 6th Street, SE #202
4287 6th Street, SE #102
4291 6th Street, SE #301
4297 6th Street, SE #201

Ward Eight (8)

CASCADE PARK APARTMENTS and
CASCADE PARK PARTNERS, LLC
Housing Providers/Appellants

v.

URNA WALKER, et al.
Tenants/Appellees

DECISION AND ORDER

November 18, 2014

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from an order issued by the Rental Accommodations Division (RAD) of the District of Columbia Department of Housing and Community Development (DHCD), based on a petition filed with the Rental Accommodations and Conversion Division (RACD) of the Department of Consumer and Regulatory Affairs (DCRA).[1] The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act ("DCAPA"),

[1] The Office of Administrative Hearings (OAH) assumed jurisdiction over tenant petitions from DCRA pursuant to the Office of Administrative Hearings Establishment Act, D.C. Law 14-76, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2007 Repl.). The functions and duties of RACD in DCRA were transferred to DHCD by § 2003 the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2010 Repl.)).

D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations ("DCMR"), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

I. PROCEDURAL HISTORY

On January 14, 2005, the Commission issued a Decision and Order in this case, Cascade Park Apartments v. Walker, TP 26,197 (RHC Jan. 14, 2005) (Initial Decision and Order). The Commission affirmed the hearing examiner's decision in part, reversed in part, and remanded for further proceedings. Cascade Park Apartments, TP 26,197 at 72. The Initial Decision and Order contains a complete procedural history of this case prior to January 14, 2005, *id.* at 1-5, and the Commission herein will only set forth the procedural history relevant to the instant appeal.

On May 19, 2007, Acting Rent Administrator Keith Anderson issued a Proposed Decision and Order on TP 26,197 (Tenant Petition), ordering that Cascade Park Apartments pay damages to Tenants Alston Cyrus, Constance Jackson, Errol Smith, Raymond Frazier, Francis Walker, Urna Walker, and Clem Young (collectively, "Tenants"), for a substantial reduction of services at the housing accommodation known as Cascade Park Apartments (Housing Accommodation).[2] Walker v. Cascade Park Apartments, TP 26,197 (RAD May 19, 2007) at 67-

[2] The Commission notes that the issuance of a Proposed Decision and Order is mandated by the DCAPA, D.C. OFFICIAL CODE § 2-509(d) (2001), when the person rendering a decision was not the same person who personally heard the evidence. D.C. OFFICIAL CODE § 2-509(d) provides the following:

> Whenever in a contested case a majority of those who are to render the final order or decision did not personally hear the evidence, no order or decision adverse to a party to the case (other than the Mayor or an agency) shall be made until a proposed order or decision, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of those who are to render the order or decision, who, in such case, shall personally consider such portions of the exclusive record, as provided in subsection (c) of this section, as may be designated by any party.

68; Record for TP 26,197 (R.) at 985-86. The Tenants filed exceptions and objections (Exceptions and Objections) to the Proposed Decision and Order on June 9, 2007.

On January 30, 2008, Grace Wiggins, Acting Rent Administrator at the time (Ms. Wiggins), issued a final Decision and Order: Walker v. Cascade Park Apartments, TP 26,197 (RAD Jan. 30, 2008) (Final Order). R. at 1064-71. In response to the Tenants' Exceptions and Objections, Ms. Wiggins added Cascade Park Partners, LLC (Cascade LLC) as a housing provider. Final Order at 2-3, 5; R. at 1067, 1069-70. Ms. Wiggins provided the following explanation, in relevant part, for her decision to add Cascade LLC as a party to the Tenant Petition:

> . . . The [Acting Rent Administrator Grace Wiggins] takes official notice that the land records of the District of Columbia reflect that the subject apartments were sold by Cascade Park, Inc. to Cascade Park Partners, LLC in two separate transactions. The first, recorded on April 8, 2004, conveyed a 95% interest in the subject property to Cascade Park Partners, LLC . . . . The second, recorded on December 28, 2005, conveyed the remaining 5% interest in the property to Cascade Park Partners, LLC . . . .
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> The [Acting Rent Administrator Grace Wiggins] further takes official notice that simultaneously with the April 8, 2004 sale of the property, Cascade Park, Inc. and Cascade Park Partners, LLC entered into and recorded a Tenancy in Common Agreement with respect to the subject property . . . . That agreement provided, inter alia, that "[t]he parties ... may use a trade name in connection with the Property which shall be Cascade Park Apartments ...." . . . The [Acting Rent Administrator Grace Wiggins] further finds that that agreement provided that the parties to it would "share all liabilities in respect of [sic] the Property ... in respect of [sic] their percentage interest in the Property." . . . As of April 8, 2004, Cascade Park Partners, LLC bore 95% of the liabilities of the property and as of December 28, 2005 that entity bore 100% of the liabilities of the property.

Id. at 2-3; R. at 1069-70. Ms. Wiggins amended the case caption to include both Cascade Park Apartments and Cascade LLC as named housing providers in this case. *Id.* at 1; R. at 1071. The Final Order provided that the parties could obtain review of the Final Order by filing a motion for reconsideration with RAD, or an appeal with the Commission, provided that motions for

reconsideration and appeals must be filed within ten (10) days of the issuance of the Final Order, in this case on or before February 19, 2008. *Id.* at 6-7; R. at 1065-66.

On September 2, 2008, more than seven (7) months after the issuance of the Final Order, Cascade LLC filed a motion to vacate the Final Order (Motion to Vacate). Cascade LLC characterized the following four (4) contentions as the bases for its Motion to Vacate: (1) Cascade LLC was never made aware of the administrative proceedings on the Tenant Petition; (2) Cascade LLC did not exist as a corporate entity during the time period relevant to the claims in the Tenant Petition; (3) Cascade LLC was never properly served with the Tenant Petition; and (4) "because [Tenants] or their counsel have possibly urged a fraud upon the Court." Motion to Vacate at 1; R. at 1104.

Acting Rent Administrator Keith Anderson (Acting Rent Administrator)[3] issued an order on March 24, 2010, denying Cascade LLC's Motion to Vacate. Walker, TP 26,197 (RAD Mar. 24, 2010) (Order Denying Motion to Vacate).[4] In the Order Denying Motion to Vacate, the Acting Rent Administrator made the following findings of fact:[5]

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[3] The Commission notes that at the outset of this case Keith Anderson served as Acting Rent Administrator. He was succeeded as Acting Rent Administrator by Grace Wiggins, and then resumed the position after Ms. Wiggins' resignation. For the remainder of this Decision and Order, "Acting Rent Administrator" shall refer solely to Keith Anderson.

[4] The Commission notes that the Order Denying Motion to Vacate is date-stamped April 24, 2010; however, the Commission is satisfied based on its review of the record that this is a scrivener's error. For example, Cascade LLC's Notice of Appeal and Amended Notice of Appeal state that the Order Denying Motion to Vacate was issued "on or about" March 25, 2010. *See* Amended Notice of Appeal at 1; Notice of Appeal at 1. Similarly, the Tenants' Answer to Cascade Park Partners LLC's Amended Notice of Appeal states that the Order Denying Motion to Vacate was issued on March 24, 2010. *See* Tenants' Answer to Cascade Park Partners LLC's Amended Notice of Appeal at 5. Accordingly, where the parties agree that the Order Denying Motion to Vacate was issued "on or about" March 24 or 25, 2010, the Commission determines that the date-stamp of April 24, 2010 was merely a scrivener's error, and the actual date of issuance was March 24, 2010.

[5] The findings of fact are recited here using the language of the Acting Rent Administrator in the Order Denying Motion to Vacate.

. . . [6]

Motion to Vacate

15. In the motion to vacate, Respondent CPPL alleged, *inter alia*, that because CPPL did not exist when the hearing by the administrative body was completed, it could not be named a party to the proceedings and, assuming arguendo, that it was properly named as a party, service was never properly effected upon CPPL, as attorney Hessler was not counsel of record for CPPL on January 30, 2008. Therefore, CPPL argued that it does not bear any responsibility for any debt, cause of action, award or judgment entered against the property prior to its existence and/or prior to the sale of the property on April 8, 2004.

16. Petitioners argued that RAD should deny the motion to vacate because CPPL (1) failed to state a valid basis to vacate the decision and order under 14 DCMR Sect. 4017.1 (2004) and DC Superior Court Civil Rule (Super. Ct. Civ. R.) 60(b); (2) had notice of the proceeding through counsel; (3) failed to present a prima facie adequate defense; (4) did not move to vacate the judgment promptly upon discovery of the judgment; and (5) Petitioners will be prejudiced if the motion to vacate is granted. In addition, Petitioners argued that the motion to vacate should be denied because Respondent CPPL has improperly used the motion as a substitute for appeal; RAD correctly added CPPL as a party in that 14 DCMR Sect. 3906.2 (2004) allows the Rent Administrator to add CPPL as an additional party; and CPPL and Cascade Park, Inc. agreed to share liabilities incurred by the subject property.

17. The record reflects that Respondents had due notice of the Final Decision and Order in which Respondent CPPL was named as a party, as the Decision and Order was served upon Respondent's counsel at what was at that time Respondent's counsel's current address. Respondent's counsel did not present RAD with a change of address or a forwarding address.

18. The process related to the appeal of a final decision and order is a jurisdictional one. Unless the motion to appeal is filed timely, the Rental Housing Commission does not have jurisdiction to entertain the motion. *Joyce v. District of Columbia* [sic] *Rental Housing* [sic] *Com'n* [sic], 741 A.2d 24 (D.C. 1999). By logical extension, this also applies to RAD.

19. Cascade Park, Inc. and CPPL entered into a contractual agreement on or before April 8, 2004 in which they agreed, in part, to "share all liabilities in respect of the property . . . in respect of their percentage interest in the property."

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[6] The Commission omits a recitation of the Acting Rent Administrator's statement of procedural history. *See* Order Denying Motion to Vacate at 1-2; R. at 1172.

Order Denying Motion to Vacate at 2-4; R. at 1171-72. The Acting Rent Administrator made the following conclusions of law in the Order Denying Motion to Vacate:[7]

> 1. There is no record evidence that granting Petitioners' request for extension of time to file their response to Respondent CPPL's motion to vacate on September 24, 2008 out of time will prejudice either Respondent. Though CPPL did not consent to the enlargement of time request, Respondent CPPL filed no opposition to the motion. Accordingly, for these and other grounds stated in the motion, RAD concludes that the request for enlargement of time is consistent with the parameters set forth under Sect. 4017.1 of the Regulations and Super. Ct. [Civ.] R. 60(b). Therefore, Petitioners' September 24, 2008 responsive pleading is accepted as filed out of time.
>
> 2. Respondent CPPL's motion to vacate, though filed eight months after the January 30, 2008 Decision and Order in question, was filed within a year of that Decision and Order. It raises prima facie due process concerns that affect CPPL's potential liability. The motion challenges the validity of the Rent Administrator's substitution and given the notice and other due process issues, it does not appear to be a substitute for filing a timely appeal. As such, the motion to vacate is deemed to be properly before RAD for consideration.
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> 3. Respondent's motion to vacate fails to state the grounds relied upon for the relief requested. Pursuant to 14 DCMR Sect. 4017.1, the Rent Administrator may look to Superior Court Civil Rule 60(b) for deciding whether vacating the Final Decision would be appropriate under 14 DCMR Sect. 4017.1. *Radwan v. District of Columbia* [sic] *Rental Housing* [sic] *Com'n* [sic], 683 A.2d 478, 481 (D.C. 1996). A court may only vacate a final judgment upon a showing of "(1) mistake, inadvertence, surprise, excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial; (3) fraud, misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; or any other reason that justified relief under Super.[ ]Ct. Civ. R. 60(b).["]
>
> 4. Respondent's motion does not present any newly discovered evidence that would allow for relief under 60(b) (2). As stated in Petitioners opposition motion, the evidence demonstrates that Respondent had notice of the Final Decision and Order in the instant matter.
>
> 5. The RAD Rules, pursuant to Sect. 4103 provide, in part, that "[u]pon the death of a party, or the dissolution, reorganization, or change of ownership or

[7] The conclusions of law are recited here using the language of the Acting Rent Administrator in the Order Denying Motion to Vacate.

interest of a party, or a change in the registration statement resulting from an amendment filed . . . , the hearing examiner may, upon the motion of a party or upon the hearing examiner's own motion, substitute or add a person, partnership, or corporation."

6. The official record evidences no action on the part of CPP[L] or its representative to exclude CPPL as a party to this matter after receipt of the Final Decision and Order.

7. For these reasons and all other grounds raised in Petitioners' opposition motion, RAD determines that Respondents' motion to vacate must fail.

Order Denying Motion to Vacate at 4-5; R. at 1170.

On March 30, 2010, Cascade LLC filed a timely Notice of Appeal with the Commission. Subsequently, on April 2, 2010, Cascade LLC filed a timely Amended Notice of Appeal with the Commission (Amended Notice of Appeal) in which it raises the following issues:[8]

1. Cascade LLC was never served with the [T]enant [P]etition in this matter, and thus the Acting Rent Administrator had no jurisdiction to enter an order imposing liability on Cascade LLC.

2. Because Cascade LLC was never served, it was denied its Constitutional right, as incorporated into the District of Columbia Administrative Procedures Act, to notice of the proceedings and an opportunity to defend against Petitioners' claims.

3. Because Cascade LLC did not come into existence until 2003, when it was organized under District of Columbia law, no award could be rendered against it on claims made in the [T]enant [P]etition, which was filed in 2001.

4. Cascade LLC did not acquire any ownership interest in the subject housing accommodation until April 28, 2004, after the Rental Housing Act's three year statute of limitations (repose) had expired on the claims petitioners charged it with.

5. Because Cascade LLC was not added as a party to the [T]enant [P]etition until January 30, 2008, any claims against it were barred by the three year limitations/repose period in the Rental Housing Act, on that account alone. No relation back to those original claims is legally permissible.

[8] The issues on appeal are recited here using the language of Cascade LLC in the Amended Notice of Appeal.

6. Cascade LLC's right to due process under the law was violated when the Acting Rent Administrator amended his [sic] Final Order to add Cascade LLC as a named respondent, given that Cascade LLC had no notice of the [T]enants' application to revise the award to include it, and because Cascade LLC neither owned nor managed the subject property during the period of time for which the [T]enants made their claims in the [T]enant [P]etition.

7. Stephen O. Hessler, Esq., Cascade LLC's counsel below, was not engaged as counsel for Cascade LLC until July, 2008, so that service upon Mr. Hessler could not and did not constitute service on Cascade LLC prior thereto.

8. The Acting Rent Administrator erred by not properly serving Cascade LLC with the January 30, 2008 decision, as well as his May, 2007 proposed decision.

9. Stephen O. Hessler, Esq. notified the Rent Administrator and [P]etitioners' counsel of a change of address prior to the issuance of the January 30, 2008, decision in this case, but the decision was sent to Mr. Hessler's old address and he never received it. Neither Cascade LLC nor Mr. Hessler was aware of the January 30, 2008 decision prior to July, 2008, after receiving a brief filed in the proceeding to enter a judgment based on the award in the [T]enant [P]etition. The Acting Rent Administrator erred in determining that Cascade LLC had notice of the January 30, 2008, decision.

10. Because this is a contested case, Cascade LLC was entitled to a hearing before the Office of Administrative Hearings on the issues presented under the provisions of the D.C. Administrative Procedures Act; and the Acting Rent Administrator erred in denying that hearing.

11. The Acting Rent Administrator erred in determining that an agreement between Cascade LLC and the former owner of the housing accommodation made Cascade LLC liable to the [P]etitioners for any rent overcharges the prior owner had collected.

12. Cascade's [sic] LLC's Motion to Vacate constituted a Motion for Relief from Judgment under 14 DCMR [§] 4017.1 and the Acting Rent Administrator erred in denying the relief requested.

Amended Notice of Appeal at 1-4. The Tenants filed an answer to the Amended Notice of Appeal on April 20, 2010. Cascade LLC filed a brief on September 20, 2010 (Cascade LLC's

Brief); the Tenants filed a brief on October 7, 2011. The Commission held its hearing in this matter on October 20, 2011.[9]

II. PLAIN ERROR

The Commission's standard of review of RAD decisions is contained at 14 DCMR § 3807.1, and provides the following:

> The Commission shall reverse final decisions of the Rent Administrator which the Commission finds to be based upon arbitrary action, capricious action, or an abuse of discretion, or which contain conclusions of law not in accordance with the provisions of the Act, or findings of fact unsupported by substantial evidence on the record of the proceedings before the Rent Administrator.

While the Commission's review of an issue is typically limited to the issues raised in the notice of appeal, it may always correct "plain error." 14 DCMR § 3807.4; *see, e.g.,* Lenkin Co. Mgmt. v. D.C. Rental Hous. Comm'n, 642 A.2d 1282, 1286 (D.C. 1994); Proctor v. D.C. Rental Hous. Comm'n, 484 A.2d 542, 550 (D.C. 1984); Gelman Mgmt. Co. v. Campbell, RH-TP-09-29,715 (RHC Dec. 23, 2013); Munonye v. Hercules Real Estate Servs., RH-TP-07-29,164 (RHC July 7, 2011). The Commission notes that in the twelve (12) issues stated in the Amended Notice of Appeal, none directly and unambiguously addresses what the Commission views as the most significant initial legal issue in the Order Denying Motion to Vacate: whether substantial evidence supports the Acting Rent Administrator's finding that Cascade LLC was properly served with the Final Order. *See* Order Denying Motion to Vacate at 4-5; R. at 1170-71; Amended Notice of Appeal at 1-4. Accordingly, the Commission will address this issue herein in the context of "plain error." 14 DCMR § 3807.4; *see, e.g.,* Lenkin Co. Mgmt., 642 A.2d at

[9] The Commission notes that no party or counsel appeared at the Commission's hearing on behalf of Cascade Park Apartments.

1286; Proctor, 484 A.2d at 550; Gelman Mgmt. Co., RH-TP-09-29,715; Munonye, RH-TP-07-29,164.

As the Commission stated previously *supra* at p. 10 & n.11, a party may request relief from judgment under 14 DCMR § 4017 and Super Ct. Civ. R. 60(b) due to, *inter alia*, mistake, inadvertence, excusable neglect, newly discovered evidence, fraud, or "any other reason justifying relief." 14 DCMR § 4017.1; Super Ct. Civ. R. 60(b); *see, e.g.,* Farrow v. J. Crew Grp. Inc., 12 A.3d 28, 38 n.17 (D.C. 2011); Hago v. Gewirz, RH-TP-08-11,552, RH-TP-08-12,085 (RHC July 20, 2011); Borger Mgmt., Inc. v. Warren, TP 23,909 (RHC June 3, 1999). In this case, the Acting Rent Administrator found that the Housing Provider failed to state sufficient grounds under Super Ct. Civ. R. 60(b) or 14 DCMR § 4017.1 for relief from the Final Order. Order Denying Motion to Vacate at 5; R. at 1170. Specifically, the Acting Rent Administrator provided the following as the sole justification for his decision that Cascade LLC was not entitled to relief from the Final Order: "[Cascade LLC's] motion does not present any newly discovered evidence that would allow for relief under 60(b) (2). As stated in [the Tenant's] opposition motion, the evidence demonstrates that [Cascade LLC] had notice of the Final Decision and Order in the instant matter." *Id.*

Under the DCAPA and the Act, every decision and order issued by an agency, in this case RAD, must be provided to each party. D.C. OFFICIAL CODE §§ 2-509(e), 42-3502.16(j);[10] *see* Reid v. Gaben Mgmt. LLC, SR 20, 076 (RHC Oct. 24, 2003); Bedell v. Clark, TP 24,979

[10] D.C. OFFICIAL CODE § 2-509(e) provides, in relevant part, as follows: " . . . A copy of the decision and order and accompanying findings and conclusions shall be given by the Mayor or the agency, as the case may be, to each party or to his attorney of record."

D.C. OFFICIAL CODE § 42-3502.16(j) provides the following: "A copy of any decision made by the Rent Administrator, or by the Rental Housing Commission under this section shall be mailed by first-class mail to the parties."

(RHC June 27, 2001). The Act's regulations provide the following additional guidance regarding service of documents:

> 3911.1 All documents required to be served upon any person under this subtitle shall be served upon that person, or shall be served upon the representative designated by that person or by law to receive service or documents.
>
> 3911.2 When a party has a representative of record as provided in § 4004, service shall be made upon the representative.
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> . . .
>
> 3911.4 Actual receipt of service shall bar any claim of defective service, except for a claim with respect to the timeliness of service.

14 DCMR § 3911.1, -.2, -.4.

Based on its review of the record, the Commission determines that substantial evidence does not support the Acting Rent Administrator's determination that the Final Order was properly mailed to Cascade LLC through its counsel of record, Stephen Hessler. 14 DCMR § 3807.1; *see* Order Denying Motion to Vacate at 5; R. at 1170. The Commission's review of the Final Order reveals that it was mailed to the following two (2) addresses:

> Edward Allen, Esquire
> UDC – David A. Clarke School of Law
> 4200 Connecticut Avenue, N.W.
> Building 38, 2nd Floor
> Washington, DC 20008
>
> Stephen O. Hessler, Esquire
> 729 – 15th Street, NW Suite 200
> Washington, DC 20005

Final Order at 8; R. at 1064. However, the Commission's review of the record reveals no substantial evidence that Stephen Hessler was counsel of record for Cascade LLC at the time that the Final Order was issued. The Commission's review of the record reveals that Stephen Hessler filed a Notice of Appearance in this matter on October 2, 2001, entering his appearance only for

"Cascade Park Apts." R. at 32. The Commission notes that Stephen Hessler first noted his appearance for Cascade Park LLC in the Motion to Vacate, filed after the Final Order was issued. *See* Motion to Vacate at 1-2; R. at 1103-1104.[11]

Accordingly, based upon its review of the record, the Commission is satisfied that there is not sufficient substantial evidence that Stephen Hessler had an existing lawyer-client relationship as counsel of record in this case for Cascade LLC at the time the Final Order was issued. *See* Notice of Appearance; Motion to Vacate at 1-2; R. at 32, 1103-1104. The Commission thus determines that the Final Order was not properly served on Cascade LLC. D.C. OFFICIAL CODE §§ 2-509(e), 42-3502.16(j); 14 DCMR § 3911.1, -.2, -.4; Reid, SR 20, 076; Bedell, TP 24,979; Final Order at 8; R. at 1064.

Furthermore, the Commission notes that even though Cascade LLC eventually received a copy of the Final Order, any failure to properly and timely serve Cascade LLC at the time of the issuance of the Final Order was not harmless error.[12] D.C. OFFICIAL CODE § 2-509(e); *see* Borger Mgmt., Inc. v. Lee, RH-TP-06-28,854 (RHC Mar. 6, 2009) (quoting Richard Milburn Pub. Charter Alt. High Sch. v. Cafritz, 798 A.2d 531, 538-39 (D.C. 2002); Chevy Chase Citizens Ass'n v. D.C. Council, 327 A.2d 310, 314 (D.C. 1974)) (instructing that all hearings under the Act shall be held in accordance with the procedures for contested cases set forth in the DCAPA). Based upon its review of the record and in the exercise of reasonable discretion, the Commission

[11] The Commission's review of the record reveals that Stephen Hessler did not file a formal Notice of Appearance to enter his appearance on behalf of Cascade LLC.

[12] The Commission defines "harmless error" as "'an error which is trivial or merely academic and was not prejudicial to the substantive rights of the party assigning it, and in no way affected the final outcome of the case . . .' *See, e.g.*, Karpinski v. Evolve Prop. Mgmt., LLC, RH-TP-09-29,590 (RHC Aug. 19, 2014) at n.10; Young v Vista Mgmt., TP 28,635 (RHC Sept. 18, 2012) at n.5; Smith v. Joshua, RH-TP-07-28,961 (RHC Feb. 3, 2012) at n.2.

concludes that the Acting Rent Administrator's (or RAD's) failure to properly serve Cascade LLC a copy of the Final Order denied Cascade LLC any fair, meaningful and reasonable opportunity to contest the merits of the Final Order, either through a motion for reconsideration or timely appeal to the Commission.[13] *See, e.g.*, Smith Prop. Holdings Five (D.C.) L.P. v. Morris, RH-TP-14-28,794 (RHC Aug. 19, 2014); Carmel Partners, Inc. v. Levy, RH-TP-06-28,830, RH-TP-06-28,835 (RHC May 16, 2014); Allen, RH-TP-12-30,181; Kuratu, RH-TP-07-28,985; Shipe, RH-TP-08-29,411.

Therefore, the Commission remands this case to RAD with instructions to reissue the Final Order and properly serve Cascade LLC in accordance with D.C. OFFICIAL CODE § 2-509(e) and 14 DCMR § 3911.[14] All parties' rights regarding reconsideration of the Final Order and appeal of the Final Order to the Commission will commence upon reissuance of the Final Order, in accordance with the applicable regulations. 14 DCMR §§ 3802.1-.2, 4013.1.[15]

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[13] Under the Act and its regulations, the time limits for filing an appeal with the Commission are mandatory and jurisdictional. *E.g.* Allen v. L.C. City Vista LP, RH-TP-12-30,181 (RHC Apr. 29, 2014); Kuratu v. Ahmed, Inc., RH-TP-07-28,985 (RHC Feb. 28, 2014); Shipe v. Carter, RH-TP-08-29,411 (RHC Sept. 18, 2012). Under 14 DCMR § 3802.2, a party has ten (10) days from the issuance of a final decision, plus three (3) days if the decision was mailed, to file an appeal with the Commission. 14 DCMR § 3802.2 (2004).

The Commission's review of the record in this case reveals that the Final Order was issued on January 30, 2008, and was served on the parties by mail. Final Order at 1, 8; R. at 1064, 1071. Therefore, in accordance with the regulations, the parties in this case had until February 19, 2008 to file an appeal from the Final Order with the Commission, or a motion for reconsideration with RAD. 14 DCMR §§ 3802.2, 3816.3, 3816.5, 4013. Accordingly, the Commission determines, based on the applicable regulations and its review of the record, that Cascade LLC's April 2, 2010 Amended Notice of Appeal was not a timely appeal from the January 30, 2008 Final Order. 14 DCMR §§ 3802.2, 3816.3, 3816.5, 4013.

[14] The Commission recognizes that Cascade LLC may, in fact, raise identical issues to those presented in the Amended Notice of Appeal in a subsequent appeal from the reissued Final Order. Although the Commission generally adheres to principles of judicial efficiency, in this case, in an effort to protect all of the parties' due process rights, the Commission declines to address the issues raised by Cascade LLC in the Amended Notice of Appeal on their merits because either party may request reconsideration of the reissued Final Order, and either party may raise new or additional issues in any subsequent appeal filed with the Commission.

[15] 14 DCMR § 3802.1 provides as follows: "Any party aggrieved by a final decision of the Rent Administrator may obtain review of that decision by filing a notice of appeal with the Commission." 14 DCMR § 4013.1 provides the following:

V. CONCLUSION

Based on the foregoing, the Commission remands this case to RAD with instructions to reissue the Final Order, properly serving each of the named parties.

SO ORDERED.[16]

PETER B. SZEGEDY-MASZAK, CHAIRMAN

CLAUDIA L. McKOIN, COMMISSIONER

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (2004), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

JUDICIAL REVIEW

Any party served with a final decision and order may file a motion for reconsideration with the hearing examiner within ten (10) days of receipt of that decision, only in the following circumstances:

(a) If there has been a default judgment because of the non-appearance of the party;

(b) If the decision or order contains typographical, numerical, or technical errors;

(c) If the decision or order contains clear error that is evidence on its face; or

(d) If the existence of newly discovered evidence which could not have been discussed prior to the hearing date has been discovered.

[16] Under the Act, a majority of the Commission - namely, two (2) Commissioners - constitutes a quorum, and all decisions of the Commission shall be signed by at least two (2) members of the Commission. D.C. OFFICIAL CODE § 42-3502.02(b)(2) (2001); 14 DCMR § 3821.1 (2004).

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission…may seek judicial review of the decision…by filing a petition for review in the District of Columbia Court of Appeals. Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

D.C. Court of Appeals
Office of the Clerk
430 E. Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **DECISION AND ORDER** in TP 26,197 was mailed, postage prepaid, by first class U.S. mail on this **18th day** of **November, 2014** to:

Roger D. Luchs
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